IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(Crl.).No. 201 of 2007(S)

PETITIONER:

SIJI, W/O.MARTIN,
AGED 28 YEARS, PADAYATTY HOUSE,
CHENGAL KARA, VADAKKUMBHAGAM VILLAGE.

BY ADV. SRI.GIMMY P ANTONY
SRI.K.SUNILKUMAR

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY
HOME SECRETARY, SECRETARIAT, TRIVANDRUM.

2. THE SUPERINTENDENT OF POLICE,
ERNAKULAM (RURAL), ALUVA.

3. DISTRICT COLLECTOR & DISTRICT MAGISTRATE
ERNAKULAM.

4. SUPERINTENDENT,
VIYYUR CENTRAL JAIL, TRICHUR.

BY GOVERNMENT PLEADER SRI K.K.RAVEENDRANATH

THIS WRIT PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 26-9-2007, THE COURT ON 15/10/2007, DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: COPY OF ORDER OF DETENTION ORDER DATED 16-6-2007.

EXT.P2: COPY OF THE JUDGMENT IN C.C.923/2004 OF JFMC, PERUMBAVOOR.

EXT.P3: COPY OF JUDGMENT IN CC 645/99 DATED 19-1/06 OF JFMC, PERUMBAVOOR.

EXT.P4: COPY OF JUDGMENT IN CC 932/99 DATED 17-3-05 OF JFMC, PERUMBAVOOR.

EXT.P5: COPY OF JUDGMENT IN CC 1292/2000 DATED 2-2-05 OF JMFC, PERUMBAVOOR.

EXT.P6: COPY OF JUDGMENT IN CC 591/01 DATED 30-11-05 OF JFMC, PERUMBAVOOR.

EXT.P7: COPY OF JUDGMETN IN CC 1240/04 DATED 31-3-06 OF JMFC PERUMBAVOOR.

EXT.P8: COPY OF JUDGMENT IN CC 550/02 DATED 9-2-07 OF JFMC, PERUMBAVOOR.

EXT.P9: COPY OF FIR IN CRIME 223/03 OF JFMC, PERUMBAVOOR.

EXT.P10: COPY OF CHARGE SHEET IN CRIME NO.641/03.

EXT.P11: COPY OF CHARGE SHEET IN CRIME NO.560/04.

EXT.P12: COPY OF CHARGE SHEET IN CRIME NO.540/04.

EXT.P13: COPY OF CHARGE SHEET IN CRIME NO. 369/04.

EXT.P14: COPY OF CHARGE SHEET IN CRIME NO.428/04.

EXT.P15: COPY OF CHARGE SHEET IN CRIME NO. 569/05.

EXT.P16: COPY OF PETITION FILED BEFORE THE GOVERNMENT OF KERALA SECTION 14 OF KAAPO 2077.

EXT.P17: ORDER DATED 27-6-07 FROM THE GOVERNMENT.

EXT.P18: COPY OF PETITION FILED BEFORE THE ADVISORY BOARD, ERNAKULAM.

//TRUE COPY//

P.R.RAMAN & V.K.MOHANAN, JJ.

W.P(Crl.) NO. 201 of 2007

Dated 12th October, 2007

JUDGMENT

Mohanan, J.

The petitioner herein is the wife of one Martin @ Potty Martin, who is detained under section 3(1) and 3(2) of the Kerala Anti-Social Activities (Prevention) Ordinance 2007 (for short `the Ordinance'), as per Ext.P1 order dated 16-6-2007. She prays that by issuing a writ of Habeas Corpus command the respondents to produce her husband before this Court and to release him, and also sought for a direction commanding the respondents to take speedy steps to release her husband from the illegal confinement of respondents.

2. The petitioner submits that the petitioner's husband was detained by the 3rd respondent on the basis of the report of the 2nd respondent. According to her, though 16 cases are shown in the grounds of detention, all those cases are either charge sheeted or acquitted. The petitioner's husband is not

coming under the definition of "known rowdy" and therefore none of the provisions of the above Ordinance are applicable in the case of the petitioner's husband. Another ground is that the Government did not issue Ext.P1 confirmation order of detention within the mandatory period of 10 days from the date of detention. According to her, the detention order is dated 16-6-2007 on the basis of which the detenu was arrested and transferred to Viyyur central jail and therefore, the Government should have issued the confirmation order within ten days i.e. before 26-6-2007. The petitioner further submitted that the detenu's brother visited the Viyyur central jail on 29-6-2007, but even on that day, the detenu had not received any confirmation order and therefore contended that the detention is illegal and arbitrary. Relying on Exts.P2 to P8, the petitioner submits that out of the 16 cases noted in the detention order, the petitioner's husband was not found guilty even in a single case. So, on the strength of the above materials, the petitioner submits that the petitioner's husband cannot be treated as a "known rowdy" as defined in section 2(p)(i) and (ii) of the

Ordinance. It is also contended that moreover, within the 7 years of the above cases, crime nos 180/97, 230/98, 363/98 and 287/94 are not coming within the previous 7 years from the date of the detention and therefore, the order of detention is illegal since those materials are not sufficient to constitute the ingredients contained in the definition "known rowdy" to attract section 2 (p)(i) and (ii) of the Ordinance. The petitioner further contents on the basis of Exts.P9 to P15 that none of the cases mentioned in those documents are not on investigation or enquiry and therefore, section 2(p)(iii) is not attracted. According to the petitioner, apart from the above crimes, in 2 crime cases, viz., crime nos. 614/2003 and 280/2006, charge has not been filed, therefore according to the petitioner, would not attract section 2(p)(iii). There must be at least 3 cases. But here there are only two cases. Therefore section 2(p) of the Ordinance is not attracted and hence, the detention order is liable to be quashed. The petitioner also submitted that by filing Ext.P16 petition, the release of the petitioner's husband was sought, but the Government passed Ext.P17 order without

hearing the petitioner's husband or the counsel. Therefore, Ext.P17 is absolutely arbitrary and illegal. The petitioner has also got a case that though Ext.P16 petition was filed on 19-6-2007, the same was disposed without consideration of relevant materials and files. It is further contended that though a petition dated 27-6-2007 – Ext.P18 , was filed before the Advisory Board which was heard on 23-7-2007, so far no order is issued to the knowledge of the petitioner. According to the petitioner, she is very much aggrieved due to the arbitrary and illegal approach made by the respondents in detaining the petitioner's husband and hence, she prays for the relief as sought for.

3. Denying all the averments and resisting each and every contentions, the 3rd respondent has filed a detailed counter affidavit. In the counter affidavit, the 3rd respondent has stated that the Superintendent of Police, Ernakulam (Rural), Aluva filed a report as contemplated by the provisions under the above Ordinance. In the counter affidavit, the details of the above report has been incorporated which shows that the above said

report of the Superintendent of Police contained FIR No.483/2007 dated 14-6-2007 of the Sub Inspector of Police, Kalady police station and report dated 13-6-2007 of C.I. of Police, Chengamanad stating details about the involvement of the detenu in about 16 criminal cases in Kalady police station. The further details of the criminal cases are as follows: Crime No.180/97 for the offences punishable under sections 379 read with 34 of IPC; crime No. 230/98 for the offences punishable under sections 341,323 and 324 of IPC ; Crime No. 363/98 for the offences punishable under sections 341, 323, 324, and 326 read with 34 of I.P.C.; Crime No.287/99 for the offences punishable under sections 341 and 323 read with 34 of I.P.C.; Crime No.71/2000 for the offences punishable under sections 323, 324, and 326 read with 34 of IPC ; Crime No.204/2004 for the offences punishable under sections 371, 323, 324 and 294 (b) read with 34 of IPC ; Crime No.493/2001 for the offences punishable under sections 379 read with 34 of IPC; Crime No.223/2003 for the offences punishable under sections 143, 147, 148, 323, 324, 452, 327, 353, 332, 427, 506(ii) read with

section 149 of IPC and section 3(1) of PDPP Act; Crime No.614/2003 for the offences punishable under sections 143, 147, 148, 307 and 149 of IPC and section 3 read with section 25 (1) of Arms Act and section 3 of the Explosive Substances Act; Crime No.641/2003 for the offences punishable under sections 457,380, 461, 120 B read with section 34 of IPC; Crime No.560/2004 for the offences punishable under sections 323 and 324 of IPC; Crime No.540/2004 for the offences punishable under sections 379 and 188 of IPC and section 20 read with 23 of Sand Act; Crime No.369/2004 for the offences punishable under sections 379 and 188 of IPC; Crime No.428/2004 for the offences punishable under sections 374 and 188 of IPC; Crime No. 569/2005 for the offences punishable under sections 379 and 188 of IPC and Crime No.280/2006 for the offences punishable under sections 143, 147, 148, 427 read with 149 of IPC and section 3 of Explosive Substances Act and those offences are spanning the period from 1997 to 2006. According to the 3rd respondent, those cases are relating to the offences inclusive of unlawful assembly, rioting, causing hurt by

dangerous weapons, theft, house trespass and offences under the Arms Act, Explosive Substances Act, Prevention of Destruction of Public Property Act, and Kerala Protection of River Banks and Regulation of Removal of Sand Act etc. Though security proceedings was also initiated against the detenu under section 110 of the Cr.P.C. during the year 2003, the report of the Superintendent of Police Ernakulam Rural, Aluva further shows that, according to him, the detenu is currently involved in anti-social activities prejudicial to the maintenance of public peace and he is a "known rowdy" as defined in the above Ordinance. It is the specific case of the 3rd respondent that on examination and evaluation of the above mentioned reports, including the detailed preliminary report of the C.I. of Police , Chengamanad, and records of the cases that the 3rd respondent was fully satisfied that the detenu is coming within the definition of "known rowdy" as specified in the Ordinance and hence, he had issued orders to detain him on 16-6-2007 in exercise of his powers conferred upon him under section 3(1) and 3(2) of the Ordinance and also on the strength of the

Government Order i.e., G.O.No.38284/SSA4/2007/Home/dated 20-4-2007. Ext.R3(a) is the detention order and Ext. R3(b) is the copy of the memo for executing the detention order. As per Ext.R3(c), the Superintendent of central jail, Viyyur was directed and authorized to detain the detenu for a period of 6 months from the date of arrest. In Ext.R3(c) order, the Superintendent of central jail , Viyyur was further informed and directed that the detenu shall be set at liberty if no orders were received from the Government of Kerala confirming the detention order within 10 days. The counter affidavit further shows that on the strength of the detention order, the S.I. of Police, Kalady effected arrest of the detenu at 6.45 p.m. on 16-6-2007 and was detained at Viyyur central jail at 11.25 p.m. on the same day. It is also stated that all the details were reported to the Principal Secretary to the Government with supporting materials on 18-6-2007. Along with the counter affidavit, the 3rd respondent has produced Ext.R3(d) Government Order i.e., G.O.No. 44146/SSA4/2007/Home dated 22-6-2007 by which the Government has confirmed the detention order issued by the 3rd

respondent. It is specifically stated that the Government has sent the said confirmation order to the Superintendent of central jail, Viyyur for serving the same to the detenu and the detenu has received the said order as per his acknowledgment dated 23-6-2007. From Ext.R3(e) it can be seen that the detenu has received the confirmation order by putting his signature and endorsement to that effect. Thus according to the 3rd respondent, Ext.P1 order of detention (Ext.R3(a)) was issued on his satisfaction of the conditions contemplated by the provisions of the Ordinance and on his satisfaction that unless the detenu is arrested and detained, he would indulge in anti-social activities with regard to Ernakulam rural district which would directly or indirectly cause harm, danger, alarm, a feeling of insecurity and cause threat to general public and residents of Ernakulam rural district. Accordingly, the 3rd respondent prayed for dismissal of the writ petition.

4. We have heard the learned counsel appearing for the petitioner, and the Laision Officer appearing for the respondents 1 to 4.

5. During the course of the argument, learned counsel for the petitioner took us through the various provisions contained in the Ordinance and submitted that detention of the petitioner's husband is illegal and arbitrary in nature and is in violation of the mandatory provisions contained in Articles 21 and 22 of the Constitution of India. The other contention advanced by the counsel for the petitioner is that the facts and circumstances involved in the case are not sufficient to include the Petitioner's husband within the definition of "known rowdy" as contained in section 2(p) of the Ordinance. On an analysis of the definition contained in section 2(p) about "known rowdy", it can be seen that a person who had been found, by reason of acts done within the previous seven years as reckoning from the date of the order of detention, committed on investigation or enquiry by a competent police officer or competent authority, on complaints initiated by persons other than police officers at least in 3 separate instances not forming part of the same transaction of any offence mentioned in any clause under section 2(t) can be treated as "known rowdy". Therefore, on a joint reading of

section 2(p) and 2(t) of the Ordinance, it can be seen that in order to bring a person within the definition of "known rowdy", what required is that the authorised officer must satisfy that such person is accused in at least 3 criminal cases involving the offences covered by chapter XVI or XVII or XXII of IPC, and further, the investigating officer must find that there are materials to prove that he has committed the offences alleged. In this connection, it is pertinent to note that the detenu is facing trial more than 3 crime cases, and the investigating officer has filed charge sheet before the concerned criminal court. Therefore, the facts and circumstances involved in the case would show that the detenu is coming within the definition of "known rowdy" and therefore, the order of detention is perfectly legal and valid. Hence, the contention advanced by the counsel that the detenu would not come within the definition of "known rowdy", lacks merit and hence the said contention is liable to be rejected.

6. The learned counsel strenuously argued that the report contemplated by subsection 3 of Section 3 of the Ordinance

forwarded to the Government as well as to the Director General of Police only on 19-6-2007, but even before sending the so called record, the detenu was arrested on 16-6-2007. According to the counsel, the purpose behind subsection 3 of Section 3 is for enabling the Director General of police to order for the arrest and the Government must be made known the proposed detention of the authority who exercises the powers under section 3(1) and (2) of the Ordinance. The above contention, according to us, is without any legal force. When section 3(1) confers power on the authority to make an order of detention, it is for such authority to issue such order and to see the execution of arrest and they need not wait for any further order, either from the Government or from the Director General of Police. In the present case, it is pertinent to note that the Government has issued Ext.R3(d) confirmation order dated 22-6-2007 in terms and in full satisfaction of the mandatory requirement of subsection 3 of section 3 of the Ordinance. The 3rd respondent in his counter affidavit has specifically stated that the S.I. of police, Kalady effected orders on 6.45 p.m. on 16-6-

2007 itself, the date on which the Exct.R3(a) order, i.e., Ext.P1 detention order was issued. The purpose of sending report forthwith to the Government is for enabling the Government to discharge its statutory duty contemplated by subsection 3 of section 3. If the Government is not issuing the order in terms of Section 3 (3) within 10 days from the date of detention, the detention order itself will go, consequent result will be the release of the detenu. In the present case as evidenced by Ext.R3(d) order, Government has issued the same on 22-6-2007, i.e., within the statutorily stipulated time. Therefore, the argument of the counsel for the petitioner that the reports contemplated by section 3(3) was forwarded to the Government as well as to the Director General of Police only on 19-6-2007, is not sufficient to attribute any legal infirmities against the detention order.

7. Another contention advanced by the counsel for the petitioner is that the detenu has made a representation on 19-6-2007 before the Government and the same was not considered while issuing the confirmation order. In support of the

above contention, it is pointed out that Ext.R3(d) confirmation order does not reflect anything about the representation alleged to have been made by the petitioner. Therefore, the counsel argued that the confirmation order is issued without application of mind. Going by Ext.R3(d) order, it is crystal clear that the Government has issued the order after examining all the details contained in the detention order as well as the connected documents and after the perusal and examination of those documents. The Government was also of the opinion that the detenu is a "known rowdy" and if he is allowed to continue his anti-social activities unrestricted, it will cause danger, alarm and feeling of insecurity to the General Public and therefore the Government confirmed the order of detention issued by the 3rd respondent in exercise of his power under section 3(1) and the Government in exercise of the powers under section 3(3) of the Ordinance confirmed the detention order. Another ground on which the order of detention sought to be assailed by the counsel for the petitioner is the non-compliance of section 3(3) of the Ordinance. In support of the above point, it is averred in the writ

petition that the brother of the detenu visited the viyyur central jail on 29-6-2007 and it was gathered that no order of confirmation was issued by the Government and therefore it is contended that the detention itself is illegal and against law. Per contra, the Laision Officer inviting our attention to Ext.R3(e) document submitted that the detenu himself has made endorsement on the said document by his own handwriting and signature. On a close perusal of Ext.R3(e), it can be seen that the Superintendent of central prison, Viyyur made an endorsement certifying that he had read over and explained the confirmation order to the detenu and served him a copy of the order which was acknowledged by the detenu. Therefore, the date and signature of the detenu in Ext.R3(e) are sufficient to show the falsity of the contention raised by the petitioner regarding the non-compliance of section 3(3) of the Ordinance. Hence, it has to be held that towards the discharge of its statutory obligation, as per section 3(3) of the Ordinance, the Government have issued the confirmation order within the stipulated time and therefore, the detention of the detenu is

perfectly valid and he is not entitled to get the relief on the ground of non compliance of section 3(3) of the Ordinance.

8. Yet another contention raised by the counsel for the petitioner is that the detenu had studied only upto 9th standard and the detenu was not made aware of the grounds and details for which he is detained in prison. As pointed out earlier, as in the case of the confirmation order, the detenu was made known the contents of the confirmation order, as the same has been read over and explained to the detenu and the detenu was made his acknowledgment. Mr. K.K.Ravindranath, the Laision Officer made available to us the back records and on a perusal of the same, it is clear that Ext.P1 order was served on the detenu and he had acknowledged the receipt of the detention order as well as the grounds of detention. Therefore, it cannot be said that the detenu is not aware of the grounds and the details on which he was arrested and is being detained. It is also submitted that no copy of the documents served on the detenu, but the materials available on record show that the detenu was served with copy of the detention order as well as the grounds on which the

detention order was issued. Therefore, the above contention of the petitioner fails.

9. Another contention of the counsel for the petitioner is the non-compliance of sections 9 and 10 of the Ordinance. We have gone through the file which made available by the Laision Officer and it is seen that the Advisory Board by its opinion dated 14-8-2007 disposed of the reference made to it under section 9 of the Ordinance as R.C.No.18/07. Going by the above opinion, it can be seen that the detenu was personally heard and also heard the advocate Sri Gimmiy P Antony who appeared for the detenu on 13-7-2007. After an elaborate discussion and consideration of the entire materials, the Advisory Board made up its considered opinion as there is sufficient ground to detain the detenu on 16-6-2007 and it was also held that there is sufficient ground to continue the detention of the detenu for a period of 6 months from the date of detention. That being the position, the contention of the petitioner and her counsel regarding the non-compliance of sections 9 and 10 of the Ordinance, is really against the factual position as disclosed by

the records and contrary to the legal procedure adopted in this case.

In the light of the above discussion, we are of the view that the materials available on records are sufficient to show that the 3rd respondent , after having considered the entire situation and materials on record, arrived his satisfaction that unless the detenu is arrested and detained, he would indulge in anti-social activities with regard to Ernakulam rural district which directly or indirectly cause harm, danger, alarm, feeling of insecurity and cause threat to general public and residents of Ernakulam rural district and the Government has also came into such conclusion as disclosed by annexure R3(d) confirmation order. The criminal antecedents of the detenu ensure the correctness of the satisfaction arrived by the 3rd respondent and also the legality of annexure R3(d) order of the Government. Nothing brought out to interfere with Ext.P1 order of detention or annexure R3(d) confirmation order passed by the Government. The petitioner was not able to establish on facts that there is any violation of the fundamental rights guaranteed under Article 21 or 22 of the

Constitution of India. We also find that all the procedural safeguards were following while issuing the order of detention. Hence, there is no merit in the Writ Petition and accordingly, the same is dismissed.

P.R.RAMAN, JUDGE.

V.K.MOHANAN, JUDGE.

Kvm/

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: